IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 411/2007

MAHADEV Vs. RAMOTAR & ORS.

DATE: 21.05.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Nitin Jain for the petitioner.
Mr. B.K. Sharma, Public Prosecutor for the State.
Mr. Sri Ram Yadav for the respondents.

****

The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the order dated 19.04.2007 passed by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Alwar in Criminal Revision No. 54/2007, whereby the Revisional Court has set-aside the judgment dated 26.02.2007 passed by the Sub District Magistrate, Thanagazi, Alwar in complaint under Section 145 Cr.P.C. by which the S.D.M. has appointed the SHO, Narayanpur as Receiver of the land in question.

In brief the facts of the case are that on or about 07.11.2006 the SHO, Narayanpur through A.P.P. filed a criminal complaint under Sections 145 and 146 Cr.P.C. Before the Sub District Magistrate, Thanagazi, Alwar to take possession and appoint receiver on the

Khasra No. 83 measuring Rakba 4 Bigha to maintain the law and order in the locality. The said complaint filed by the SHO has been accepted and the SHO, Narayanpur has been appointed as Receiver over the land in question vide judgment dated 26.02.2007 passed by the Sub District Magistrate, Thanagazi, Alwar. The said judgment dated 26.02.2007 has been challenged by the respondents before the Revisional Court i.e. Special Judge, SC/ST (Prevention of Atrocities) Cases, Alwar by way of filing criminal revision. The Revisional Court after examining each and every aspect set-aside the judgment dated 26.02.2007 passed by the S.D.M., Thanagazi and ordered to handover the possession of the disputed land to the respondents and liberty was given to the petitioner here in this revision petition before this Court to take legal recourse to dispossess the respondents from the land in question.

Learned counsel for the petitioner submits that the petitioner is the Khatedar tenant of the land in question and he was cultivating the land and the respondents have forcibly take over the possession and, therefore, a complaint was moved and the SHO, Narayanpur was rightly appointed as Receiver.

It is not disputed that the revenue suit is pending and the respondents have obtained stay order

whereby the trial Court has granted stay not to alienate or transfer the land in question during pendency of the suit and this order has been assailed by the petitioner before the Revenue Appellate Authority and the same is pending.

Learned counsel for the respondents submits that since the revenue suit is pending and during pendency of the revenue suit regarding disputed land proceedings under Section 145 Cr.P.C. would be abuse of the process of Court and placed reliance on the judgments rendered by this Court in the case of **Kalu & Ors. Vs. Karnidan & Ors. (149) reported in 1990(2) RLW 553** and in the case of **Kanhaiyalal & Anr. Vs. The State of Rajasthan & Anr., 1991 Cr.L.R. (Raj.) 240,** wherein this Court has observed that Section 145 Cr.P.C.- Revenue Court seized at matter- Held, it is not proper to initiate parallel proceedings under Section 145.

In response to the submissions advance on behalf of the respondents, the learned counsel for the petitioner submits that it is not a bar that no proceeding under Section 145 Cr.P.C. can be initiated in case the revenue suit is pending between the parties and in support of his submissions he placed reliance on the judgment rendered by the Delhi High Court in the

case of **M/s Punj Lloyd Pvt. Ltd. Vs. State and Ors., 1994(1) Crimes 49,** wherein it has been held by the Delhi High Court that “Petition for quashment of proceedings under Section 145- Petitioner in possession over the premises by virtue of a tenancy agreement- Respondents made attempts to forcibly occupy the disputed property- Petitioner filed a civil suit for injunction- Order to maintain status quo- Proceedings initiated under Section 145- Sustainable in law- There being an apprehension of breach of peace- Mere grant of temporary injunction by the civil Court will not *ipso facto* operate as a bar to the proceedings under Section 145 by the Magistrate.”

Learned counsel for the petitioner further relied on the judgment rendered by this Court in the case of **Baliwala Vs. State of Rajasthan & Anr., 2005(2) Cr.L.R. (Raj.) 1055,** wherein this Court has held that “Property attached under Section 145 Cr.P.C.- Revisional Court set aside the order of attachment on the ground of pendency of Civil suit- Civil suit was not for title and possession and it was dismissed as withdrawn- Civil suit was not pending on the day of passing order by revisional Court- Held, order passed by the revisional Court is illegal and set-aside and

order passed by Magistrate is restored."

I have heard rival submissions of the respective parties and carefully gone through the impugned order dated 19.04.2007 passed by the Revisional Court and the judgment dated 26.02.2007 passed by the SDM, Thanagazi, Alwar as well as the judgments referred by the respective parties.

Upon careful perusal of the impugned order dated 19.04.2007, it appears that the Revisional Court has considered each and every aspect holding that at that time the Receiver was appointed on the basis of apprehension of breach of peace and it was categorically observed by the Revisional Court that at the time of passing of the order on the complaint under Section 145 Cr.P.C., the Magistrate has not seen who was in fact in possession of the disputed land in question on 07.11.2006 and beyond doubt it is proved that respondents were in possession of the disputed land, therefore, upon overall consideration of each and every aspect the attachment order passed by the S.D.M., Thanagazi has been quashed and set-aside by the Revisional Court and it was ordered to handover the possession of the land in question to the respondents and liberty was given to the petitioner to adopt due course of law for dispossessing the respondents.

Here in the instant case the suit has been filed by the respondents for cancellation of the entry made in the revenue record in which the trial Court has granted stay which has been challenged by the petitioner before the Revenue Appellate Authority and admittedly the suit for cancellation of the entry made in the revenue record is pending. On the contrary the petitioner submits that he is the Khatedar tenant of the land in question.

The ratio decided by this Court in the case of **Baliwala (supra)** relied by the petitioner, is not applicable to the facts and circumstances of the instant case.

Similarly the ratio decided by the Delhi High Court in the case of **M/s Punj Lloyd Pvt. Ltd. (supra)** is also not applicable to the facts and circumstances of the present case.

I am fully convinced with the submissions made on behalf of the respondents that since the revenue suit in respect of the disputed land in question is already pending, the proceedings under Section 145 Cr.P.C. would be abuse of the process of Court.

Thus, I find no illegality or error in the impugned order dated 19.04.2007 passed by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Alwar

and no interference whatsoever is required by this Court.

Consequently, the revision petition fails and the same is hereby dismissed.

The parties are agreed that the suit in question be decided expeditiously. It is expected from the Revenue Appellate Authority to decide the suit expeditiously but in any case not beyond the period of six months from the date of receipt of certified copy of this order.

(K.S. RATHORE),J.

/KKC/